

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
AT&T's Petition for Forbearance)	WC Docket No. 03-256
From Enforcement of the "Deemed Lawful")	
Provision of Section 204(a)(3) of the Act)	

COMMENTS OF PAETEC COMMUNICATIONS, INC.

PAETEC Communications, Inc. ("PAETEC") is a national facilities-based competitive local exchange carrier ("CLEC") that provides local, long distance, data and Internet services primarily to business customers. PAETEC submits these comments in regard to the Petition for Forbearance ("Petition") filed by AT&T Corp. ("AT&T").¹ In its Petition, AT&T asks the Commission to forbear from enforcing Section 204(a)(3) of the Communications Act² (the "Act") which provides, in part, that certain streamlined tariff filings under this particular section of the Act are deemed lawful upon expiration of 15 days notice of the filing, absent Commission action to suspend such filing.³

PAETEC takes no position on the substantive aspects of the Petition, other than to note that PAETEC has often availed itself of the streamlined tariffing provisions and found them to be administratively efficient and an aid to reducing uncertainty in its operations. Instead, PAETEC seeks in these brief comments to emphasize and support AT&T's contention that "forbearance operates only prospectively" so that "LECs would not be subject to potential retroactive damages liability for any unsuspended streamlined tariffs that became effective prior to granting AT&T's

¹ AT&T Petition for Forbearance, WC Docket No. 03-256, *Public Notice*, DA 03-4076 (rel. Dec. 24, 2003) ("Petition").

² 47 U.S.C. § 204(a)(3).

³ *Id.* at iii.

instant petition.”⁴ For the Commission to assume otherwise (should it grant the Petition) would mark a reversal of well-established Commission precedent and would wreak havoc upon LECs who have structured their operations in reliance on the plain meaning of the statute.

AT&T’s position comports with Commission precedent, which holds that “tariff filings that take effect, without suspension, under section 204(a)(3) that are subsequently determined to be unlawful in a section 205 investigation or a section 208 complaint proceeding *would not subject the filing carrier to liability for damages* for services provided prior to the determination of unlawfulness.”⁵ This is in contrast to tariff filings under other provisions of the Act, under which, if they are subsequently determined to be unlawful in a complaint proceeding commenced under section 208 of the Act, “customers who obtained service under the tariff prior to that determination may be entitled to damages.”⁶ Consequently, regardless of the disposition of the Petition, nothing should affect or undermine the lawfulness of unsuspended streamlined tariffs filed before the effective date of the Commission’s ruling.

⁴ *Petition* at 5 n.3.

⁵ Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, *Report and Order*, 12 FCC Rcd 2170 para. 20 (1997)(emphasis supplied)(“*Implementation Order*”).

⁶ *Id.*

CONCLUSION

For the reasons detailed herein, PAETEC respectfully requests that whatever relief the Commission grants in the instant proceeding be applied prospectively, in accordance with the plain meaning of the Act and Commission precedent.

Respectfully submitted,

/s/

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